

VZCZCXRO9727

RR RUEHAG RUEHAST RUEHDA RUEHDF RUEHFL RUEHIK RUEHKW RUEHLA RUEHLN  
RUEHLZ RUEHNP RUEHPOD RUEHROV RUEHSK RUEHSR RUEHVK RUEHYG  
DE RUEHBW #1250/01 3401526  
ZNR UUUUU ZZH  
R 051526Z DEC 08  
FM AMEMBASSY BELGRADE  
TO RUEHC/SECSTATE WASHDC 0706  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
RHEHNS/NSC WASHDC  
RUZEJAA/JAC MOLESWORTH RAF MOLESWORTH UK  
RHMFISS/HQ USEUCOM VAIHINGEN GE

UNCLAS SECTION 01 OF 02 BELGRADE 001250

SENSITIVE  
SIPDIS

E.O. 12958: N/A

TAGS: [PGOV](#) [PREL](#) [SR](#)

SUBJECT: SERBIAN PARLIAMENT CONSIDERS JUDICIAL REFORM AMID  
CONTROVERSY OVER JUDGE REELECTION

Summary  
-----

[¶1.](#) (SBU) The Serbian Parliament is developing a package of legislation designed to strengthen the judiciary and improve its efficiency. Some observers, especially the Judges Association of Serbia, have criticized the bills for requiring the selection of new judges for all courts, warning this could politicize the judiciary, and for abolishing some local courts, which they believe would make access to justice much harder for some citizens. End Summary.

Judicial Reform Bills in Parliament  
-----

[¶2.](#) (U) Parliament began on November 12 debate on a package of five bills to implement changes required by the 2006 Constitution, the Law on the Constitution, and the 2006 Judicial Reform Strategy (JRS). The package of legislation includes a draft Law on Judges, a Law on Organization of the Courts, and the Public Prosecution Act, which describe the organization and function of the judiciary and prosecution. The laws would replace the current Municipal and District Courts with Basic and Higher Courts and create the Supreme Appellate Court (Court of Cassation in civil law) to replace the current Supreme Court. The laws would transfer many types of cases to other types of courts, including the Administrative and Appeals Court, which were created by law in 2001 but never implemented. In addition, the Law on the High Judicial Council (HJC) would establish a new HJC to replace the existing one, and the Law on the State Prosecutors' Council would establish a similar council for public prosecutors. The councils would be responsible for drafting criteria for selection, discipline, and dismissal of judges and prosecutors, and for the first time, the High Judicial Council rather than the Justice Ministry would be given responsibility for management and oversight of most day-to-day aspects of the judiciary.

[¶3.](#) (U) In addition, the government plans to rationalize the distribution of courts by creating a new network of courts that would reduce the number of Municipal (soon to be Basic) Courts, consolidate others, and cut the number of judges from 2,500 to 2,000. The most controversial provisions of the bills require the new HJC to select new judges for all of the newly organized courts according to criteria it would establish. Applicants for these judgeships would not be limited to sitting judges, and current judges could also apply for other judicial openings. The Justice Ministry has promised to send the HJC's draft selection criteria to the Council of Europe for evaluation before the process begins.

Judicial Reform Long Awaited  
-----

[¶4.](#) (SBU) The need for judicial reform in Serbia has been long recognized, after decades of political interference during the socialist era and the Milosevic regime. The European Commission has repeatedly stressed the need for greater judicial independence,

efficiency, and transparency before Serbia's eventual accession to the European Union. At the public unveiling of the bills on October 29, President Tadic said judicial reform was necessary to increase judicial independence and improve citizens' confidence in the judiciary's ability to protect their rights and combat corruption. Justice Minister Snezana Malovic told us privately that the new network of courts would increase efficiency and that the selection of new judges would improve the overall quality of judges. War Crimes Court President Sinisa Vazic told us reform was needed to address a serious workload imbalance: some judges in outlying courts heard only two or three cases per year while others, particularly those in Belgrade, had dozens of cases. Justice Ministry State Secretary Slobodan Homen told us on December 2 that the Ministry's goal for the reforms was to bring Serbia's court system up to EU standards. He encouraged review of the legislation and asked that he be told of any provisions which were not EU-compliant.

#### Possible Flaws in Reform Plan

-----

15. (SBU) While the need for further reforms of the system is not disputed, some observers have expressed concerns about the government's proposals. The most controversial aspect of the reform plan is the selection of judges for the newly organized courts. The Judges Association of Serbia (JAS), a voluntary organization to which more than half of all Serbia's judges belong, reacted strongly, stating this provision constituted reelection of sitting judges, whereas the Constitution confers life tenure on judges, who can only be dismissed for misconduct. The JAS cautioned that the status of judges left without positions because their courts were eliminated could only be settled by a Constitutional Court ruling. JAS is further concerned that the draft legislation gives the new, Parliament-appointed HJC sole responsibility for conducting the

BELGRADE 00001250 002 OF 002

entire selection process, which the JAS sees as an opening for pervasive political influence on all judges. The JAS also said it did not get to see final drafts of the laws and contended there was no proper public discussion. Based on a letter from JAS, the Consultative Council of European Judges issued a declaration November 14 expressing concern that the reelection of judges "may infringe judicial independence." The Justice Ministry stated that the process was not a "reelection" because the entire court network would be new and judges would be applying for new jobs, not their own.

16. (SBU) Even if the selection process is constitutional, observers have strong concerns that the process would be difficult and time-consuming and could even suspend the ordinary work of the judiciary. Supreme Court President Vida Petrovic Skero, who also chairs the existing HJC, told us she anticipated a total of 10,000 applications for the 2,000 judicial positions. She said she worried about the capacity of the new HJC to complete the selection process within one year, since the existing HJC had no staff, resources, or selection procedures that could be transferred. Director of OSCE Belgrade's Rule of Law and Human Rights Department Ruth Van Rhijn expressed skepticism that candidates for positions could be reviewed thoroughly in the 90 days after the appointment of the HJC, as currently required by the bill. She said the government's confidence that it could enact its plan so quickly gave the appearance that the choice of judges was "precooked."

17. (SBU) There are also concerns about the plan to eliminate some courts. Vazic said some citizens would have to travel far to conduct routine tasks such as obtaining birth certificates, permits, and licenses. Chief Public Prosecutor Isuf Sulejmani from Presevo in southern Serbia told us he worried that if the municipality's court closed, ethnic Albanians would have to attend the court in predominantly Serb Vranje, where their cases might not be given fair treatment. Belgrade First Municipal Court President Miodrag Majic told us it would be difficult if not impossible to manage the new, consolidated courts efficiently or to oversee the work of all the judges appropriately. Malovic told us the Ministry was concerned about access for minorities and had taken this into account in its plan for court reorganization. The Justice Ministry announced that it received 300 suggested amendments to the bills and had accepted

more than 90 of them, which have not been made public.

Comment

-----

18. (SBU) Decades of political interference and inefficiencies in Serbia's judicial system have compromised judicial independence and citizens' confidence in the government. Post has provided a wide range of support to help strengthen the judiciary and participated in some of the expert debates on the judicial reform package. Nevertheless, we are concerned that the judge selection exercise could aggravate existing inefficiencies during the selection process, since judges who thought they had life-time tenure would need to spend time applying for the "new" positions and might also be distracted by efforts to challenge the laws in the Constitutional Court, rather than focusing on their case loads. End Comment

BRUSH